

Patent Publication No. US 2002/0089129 A1 were, at the time the invention of the present application was made, subject to an obligation of assignment to K-2 Corporation. The present application and U.S. Patent Publication No. US 2002/0089129 A1 have been subsequently assigned to K-2 Corporation.

The foregoing statement alone is sufficient evidence to disqualify the prior art reference (U.S. Patent Publication No. US 2002/0089129 A1) against the claims of the present application. *Id.* at 700-39. Accordingly, because U.S. Patent Publication No. US 2002/0089129 A1 and the claimed embodiments of the present invention "were, at the time the invention was made, subject to an obligation of assignment to the same person," applicants respectfully submit that U.S. Patent Publication No. US 2002/0089129 A1 published to Aiken, is disqualified as prior art against the claimed invention. 35 U.S.C. § 103(c). Therefore, the rejections of Claims 1-3, 5-18, 20-24, 26, and 28-36 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Publication No. U.S. 2002/0089129 A1 in view of Okajima should be withdrawn. Further, the rejections of Claims 4 and 19 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Publication No. US 2002/0089129 A1 and Okajima in further view of Deacon should also be withdrawn.

Obviousness-Type Double Patenting

Claims 1-24, 26, and 28-36 stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1-16 of co-pending Application No. 09/757,827, to Aiken in view of Okajima. According to M.P.E.P. § 804, the "provisional" double patenting rejection should continue to be made by the Examiner in each application as long as there are conflicting claims in more than one application unless the "provisional" double patenting rejection is the only objection remaining in one of the applications. M.P.E.P. § 804(I)(B) (8th Ed., Aug. 2001). If the "provisional" double patenting rejection in one application is the only rejection remaining in that application, the Examiner

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should then withdrawal the double patenting rejection and permit the application to issue as a patent. *Id.* at 800-19. Since U.S. Patent Publication No. US 2002/0089129 A1 has been disqualified as prior art, and thus, the claim rejections of Claims 1-24, 26, and 28-36 under 35 U.S.C. § 103 are required to be withdrawn, the "provisional" double patenting rejection in the present application is the only rejection remaining. Therefore, applicants respectfully request withdrawal of the "provisional" double patenting rejection and permit the present application to pass on to issuance.

CONCLUSION

In view of the foregoing remarks, applicants submit that the present application is in condition for allowance. Thus, applicants respectfully request allowance of all claims and to expeditiously pass on the present application to issuance. If there are any remaining issues in the present application, the Examiner is invited to telephone the undersigned attorney at the number listed below.

Respectfully submitted,

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I hereby certify that this correspondence is being deposited with the U.S. Postal Service in a sealed envelope as first class mail with postage thereon fully prepaid and addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the below date.

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